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硕 士 学 位 论 文

当前司法语境下的案例指导制度

Case Guidance Mechanism under Current Judicial System

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内 容 摘 要

近年来,随着人们对司法的要求提高,“同案不同判”现象受到关注,担负着统一法律适用重任的案例指导制度应运而生,从而引发了人们对于案例指导制度的内涵、效力定位、合理性以及与当下司法环境是否契合的一系列思考与争论。本文在廓清案例指导制度相关概念的基础上,试图以一个内在视角,即从当前我国司法建设以及承载法治建设的文化制度传统的角度,以合理性、司法解释之局限、域外经验分析以及现实条件等视点,以期从深度和广度上更进一步涤清案例指导制度与当前法政语境的契合性;同时择取“法官造法”、法官自由裁量权以及审级制度等几个视点,深入分析目前困扰案例指导制度建设的问题,进而尝试提出完善案例指导制度的几点建议。

本论文由前言、正文和结语三部分组成,其中正文又分为四章。

本文第一章分析案例指导制度的内涵、效力、作用。第二章择取几个特定的视角——从形式合理性、实质合理性、司法解释的局限性等角度分析案例指导制度存在的必要性。第三章从理论发展、现实条件角度分析案例指导制度的合理性,认为案例指导制度顺应了两大法系逐渐融合的发展趋势,中国固有的案例文化土壤、人民法院的司法实践经验、法院系统的科层制结构适于案例指导制度的生长。第四章对当前司法语境下的案例指导制度存在的问题进行分析,并认为应从规范发布机制、完善审级制度等角度进行完善。

关键词: 案例指导; 合理与可能; 困惑与求解

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ABSTRACT

In recent years, with the increase of the requirement to justice, the phenomenon of “the same case, the different judgments” arouses more and more attention, which causes the birth of the system of case guidance that takes on the task of uniting the application of laws, hence, thinking and disputes on the connotation, validity and legitimacy of case guidance and the problem that whether it conforms to the current judicial environment have been stimulated. Based on the clarification of the concepts related to the mechanism of case guidance, this thesis attempts to clarify the conformance between the system of case guide and the current political and legal context from an internal perspective---- the perspective of the judicial construction and the construction of the rule of law in terms of the traditional cultural system, in the viewpoints of the reasonableness, the restriction of judicial interpretation, the foreign empirical analysis and the reality. Meanwhile, the perspective of judge-made-law, judicial discretion and the system of trial grade are selected, based on which the problems that bother the construction of the case guidance are analyzed, and the advices for consummating the system of case guidance are proposed thereafter.

The thesis is made up of the preface, the body and the conclusion, in which the body is divided into four chapters.

The first chapter analyzes the connotation, the validity and the function of the system of case guidance. The second chapter analyzes the necessity of the existence of such system in the viewpoints of formal reasonableness, substantive reasonableness and the limitations of judicial interpretation. The third chapter analyzes the reasonableness of this system from the aspects of theoretical development and the reality. It gives the viewpoints that such system accommodates the increasing trend of integration of two families of legal system. Furthermore, the inherent Chinese culture,

judicial experience of people's courts and bureaucracy structure of court system are suitable for the growth of the system of case guidance. The last chapter solves the problems of the system of case guidance in current judicial context and makes suggestions that it should consummate such system in decreeing the regulations and improving the system of trial grade.

Key words: Case guidance; Reasonableness and feasibility; Problem and solving

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